

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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JOHN WESLEY PHILLIPS,

Petitioner – Appellant,

v.

DAVID C. MILLER, Warden of the  
Lawton Correctional Facility;  
ATTORNEY GENERAL OF THE  
STATE OF OKLAHOMA,

Respondents – Appellees.

No. 07-6164  
(W. D. Okla. No. 06-CV-1414)

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**ORDER**

Filed November 13, 2007

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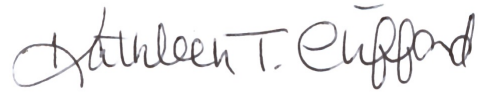
The opening brief and application for certificate of appealability (“COA”) for Appellant-Petitioner John Phillips were to be filed in this court on September 17, 2007. No opening brief or application for COA was filed. Appellant Phillips failed to comply with the rules of this court.

In an October 23, 2007 letter, Appellant Phillips was advised that his opening brief and application for COA were past due and that failure to file might result in dismissal of the appeal without further notice. Appellant was given 10 calendar days - until November 2, 2007 - to comply. No opening brief or application for COA was filed.

Upon consideration, the appeal filed by Appellant John Phillips is **DISMISSED** for

failure to prosecute. *See* 10th Cir. R. 42.1. The mandate shall issue forthwith.

Entered for the Court  
Elisabeth A. Shumaker, Clerk

A handwritten signature in dark ink, reading "Kathleen T. Clifford". The signature is written in a cursive, flowing style with a large initial 'K'.

Kathleen T. Clifford  
Attorney - Deputy Clerk